

Next, since Reeves's regular rate of pay was not set by an employment contract, the court converted his salary to a regular hourly rate by the method specified in 8 AAC 15.100(a)(2); treating Reeves's \$1113 weekly salary as straighttime compensation for eight-hour workdays totaling forty hours of work per week, the court determined his regular hourly wage to be \$27.83, and his overtime rate to be \$41.74.¹²

The court then used this overtime rate to compute Reeves's overtime earnings. In sixty weeks of salaried employment at \$1113 per week, Reeves received pay totaling \$66,780.¹³ During this time, because of his two-weeks-on/two-weeks-off work schedule, Reeves actually worked only thirty weeks, averaging ninety-eight hours (seven fourteen-hour workdays) of work each workweek, for a total of 2940 hours.¹⁴ Of this total, 1200 hours were straighttime; 1740 were overtime.¹⁵ Multiplying Reeves's 1740 actual overtime hours by his \$41.74 hourly overtime rate of pay, the court figured his earned overtime pay to be \$72,627.60.¹⁶

While the parties contested various aspects of this computation below, on appeal the parties no longer challenge the court's conclusion that Reeves actually earned \$72,627.60 in overtime pay; nor do they dispute the method of converting salary to regular pay that led the court to reach this conclusion. Thus it is undisputed that the court correctly applied 8 AAC 15.100(a)(2) to answer the first question posed in determining Reeves's overtime damages: how much overtime did Reeves earn?

D. After Computing How Much Overtime Pay Reeves Earned, the Court Erred in Failing to Consider Separately How Much Pay PMC Still Owed Him.

[2] Upon determining how much overtime Reeves earned, the court, without fur-

ther explanation, awarded him the entire amount of his overtime earnings as overtime damages. In failing to consider separately how much of Reeves's earned overtime wages PMC still owed him, the court made two tacit assumptions: first, that none of Reeves's overtime earnings had yet been paid; and, second, that all of his previously paid salary should count as straighttime compensation, no matter how few straighttime hours Reeves had actually worked.

Reeves insists that the court correctly applied 8 AAC 15.100(a)(2) in reaching this result. He reasons that subparagraph (a)(2) is clear on its face. It expressly provides the salary "will be considered to be compensation for an eight-hour work day and 40-hour workweek..." Contrary to PMC's claims, this regulation does more than simply define the regular and overtime rates; it provides that the salary is the compensation for a regular workweek.

But subparagraph (a)(2) is not a freestanding provision; it must be read in the context of 8 AAC 15.100(a) as a whole. In its opening sentences, 8 AAC 15.100(a) defines regular rate of pay as "an hourly rate figured on a weekly basis" and provides that salary "must be converted to an hourly rate when determining the regular rate[.]" This provision requires Reeves's annual salary to be "figured" as a weekly salary; his weekly salary—\$1113—is what subparagraph (a)(2) refers to in commanding that "the salary will be considered to be compensation for an eight-hour work day and 40-hour workweek."

Moreover, subparagraph (a)(2) does not directly define overtime damages; it merely prescribes the correct method by which a worker's salary "must be converted to an hourly rate ... for computing overtime compensation."¹⁷ Because paragraph (a) specifies that "the regular rate is the basis for computing overtime," subparagraph (a)(2)

cannot in itself be considered time damages. Instead, it is that, once the regular rate is determined by following subparagraph (a)(2), the process, paragraph (a) effectively prescribes that it be used in computing overtime."

Thus, when read in light of subparagraph (a)(2) does not support the proposition that Reeves's salary should automatically be considered compensation for whatever straighttime he actually worked. Rather, it is a narrower and more sensible proposition: each week of Reeves's salary is treated as compensation for a certain number of actual straighttime work hours at that rate of pay. In effect, subparagraph (a)(2) strives to ensure that salaried workers, like hourly workers, are compensated on the basis of their regular rate of pay for the hours they actually work.

So construed, 8 AAC 15.100(a)(2) requires a salaried worker's overtime pay to be measured by the difference between the total salary actually paid and the total wages earned for all hours actually worked—both straighttime and overtime—based on the regular rate of pay. Because the difference between pay earned and total salary paid reflects the additional wages due, it must serve as the primary measure of overtime damages. As a secondary measure, the difference must be doubled to liquidated damages. See AS 18.05.010.

[3] Accordingly, 8 AAC 15.100(a)(2) require a salaried worker to be paid unpaid overtime compensation calculated by: (1) "figuring" the worker's regular rate on a weekly basis; (2) assuming the worker's salary represents pay for a certain number of hours of straighttime work; (3) using the "regular rate" to compute overtime compensation.

12. See *id.*

13. 60 weeks of salary at \$1113 per month = \$66,780 total salary.

14. See *supra* note 1.

15. See *id.*

16. 1740 overtime hours × \$41.74 per hour overtime pay (based on 1.5 × the regular hourly rate of \$27.83) = \$72,627.60.

17. 8 AAC 15.100(a).

18. See *supra* note 14.

19. See *supra* note 1.

20. See *supra* note 3.

21. See *supra* note 17.

...awarded him the entire overtime earnings as overtime, failing to consider separately Reeves's earned overtime. All owed him, the court made assumptions: first, that none of his earnings had yet been paid; second, that all of his previously paid count as straighttime compensation; and third, that the matter how few straighttime hours he actually worked.

...that the court correctly applied 15.100(a)(2) in reaching this conclusion. That subparagraph (a)(2) is on its face. It expressly provides that it will be considered to be compensation for an eight-hour work day and an eight-hour work week. Contrary to the court's conclusion, this regulation does more than define the regular and overtime rates. It provides that the salary is to be converted to a regular workweek rate. Subparagraph (a)(2) is not a freestanding provision. It must be read in the context of the entire regulation. In its opening, 8 AAC 15.100(a) defines regular rate as "an hourly rate figured on the basis of the regular rate of pay" and provides that salary is to be converted to an hourly rate when the regular rate of pay is used. Reeves's annual salary is to be converted to a weekly salary; his weekly salary is what subparagraph (a)(2) is mandating that "the salary will be converted to an hourly rate for an eight-hour work day and 40-hour work week."

Subparagraph (a)(2) does not define overtime damages; it merely provides the correct method by which a salary must be converted to an hourly rate for computing overtime compensation. Because paragraph (a) specifies that the regular rate is the basis for computing overtime, subparagraph (a)(2)

cannot in itself be considered to define overtime damages. Instead, it seems apparent that, once the regular rate of pay is derived by following subparagraph (a)(2)'s conversion process, paragraph (a) effectively makes the rate determinative of overtime damages by prescribing that it be used "as the basis for computing overtime."

Thus, when read in light of paragraph (a), subparagraph (a)(2) does not support the proposition that Reeves's entire annual salary should automatically be treated as compensation for whatever straighttime hours he actually worked. Rather, it stands for the narrower and more sensible proposition that each week of Reeves's salary should be treated as compensation for a corresponding week of actual straighttime work at his regular rate of pay. In effect then, subparagraph (a)(2) strives to ensure that salaried workers, like hourly workers, are compensated on the basis of their regular rate of pay for all of the hours they actually work.

So construed, 8 AAC 15.100(a)(2) requires a salaried worker's overtime compensation to be measured by the difference between the total salary actually paid by the employer and the total wages earned by the employee for all hours actually worked—straighttime and overtime—based on the regular rate of pay. Because the difference between total pay earned and total salary paid will always reflect the additional wages necessary to ensure payment based on the regular rate for all hours actually worked, this difference must serve as the primary measure of overtime damages. As a secondary measure, this difference must be doubled to account for liquidated damages. See AS 23.10.110.

[3] Accordingly, 8 AAC 15.100(a) and (a)(2) require a salaried worker's award for unpaid overtime compensation to be computed by: (1) "figuring" the worker's salary on a weekly basis; (2) assuming that the week of salary represents pay for a week of straighttime work; (3) using the "regular rate" of

hourly pay derived from this assumption as the basis for determining the worker's total compensation for all hours actually worked; and (4) deducting from this amount all amounts of salary actually paid.

Applying this approach to Reeves's situation yields the following computation. In his sixty weeks of work at an annual salary of \$57,876, Reeves received pay totaling \$66,780.¹⁸ During this time, he actually worked a total of 2940 hours. Of that total, 1200 hours were straighttime; 1740 were overtime.¹⁹ Under 8 AAC 15.100(a)(2), his weekly salary was \$1113, and so his regular rate of pay was \$27.83 per hour and his overtime rate was \$41.74.²⁰ Applying the overtime rate to Reeves's overtime hours yields earned overtime pay of \$72,627.60;²¹ applying the regular rate of pay to Reeves's actual straighttime hours yields earned straighttime pay of \$33,396.00.²² The total of straighttime and overtime earnings is \$106,023.60.²³

Based on his regular rate of pay, this is the amount that Reeves earned for the work that he actually performed. Deducting the \$66,780 in salary that PMC actually paid Reeves from the wages of \$106,023.60 that he actually earned leaves \$39,243.60. This is the amount of Reeves's overtime damages—the overtime compensation that remains unpaid.

In many cases, the trial court's method might yield the same result; that method, again, was to simply treat all earned overtime wages as damages and all previously paid salary as actually earned straighttime pay. But, as we have seen, the court determined Reeves's regular rate of pay on the premise that each week of his annual salary would pay for a week of actual straighttime work. Yet because of his alternating work schedule, Reeves actually worked only half of the weeks for which he received annual salary. In sixty weeks of salaried employment,

...the hours × \$41.74 per hour over and on 1.5 × the regular hourly rate = \$72,627.60.

10(a).

18. See *supra* note 14.

19. See *supra* note 1.

20. See *supra* note 3.

21. See *supra* note 17.

22. 1200 hours of straighttime wages × \$27.83 regular rate of pay per hour = \$33,396.00.

23. \$106,396.00 in straighttime pay + \$72,627.60 in overtime pay = \$106,023.60 total pay.

he earned only thirty weeks of straighttime pay.

Under these peculiar circumstances, treating all of Reeves's salary as straighttime pay and all of his earned overtime as damages would yield an anomalous result: the salary PMC paid Reeves would amount to straighttime pay of \$55.65 per hour, or twice the regular hourly rate of pay contemplated under 8 AAC 15.100(a)(2).²⁴

Because this hourly rate doubles the regular rate imputed to Reeves under the regulation, it has no basis in law. And because no evidence in the record suggests that Reeves's sixty weeks of salary were actually intended to pay only forty hours per week of straighttime wages for thirty workweeks,²⁵ this rate of pay has no basis in reality, either. Nor can Reeves plausibly justify this enhanced sanction for PMC's failure to make timely payment of his full overtime wages. The liquidated damages provision of AS 23.10.110 already imposes the appropriate measure of punishment for PMC's late payment.²⁶

In short, to count Reeves's entire sixty weeks of salary as pay for only thirty weeks of actual straighttime work would violate subparagraph (a)(2)'s mandate to consider each week of his salary as a week of straighttime pay.

III. CONCLUSION

[4] We thus conclude that the trial court erred in treating Reeves's entire salary as straighttime pay. We hold that a court converting annual salary to a regular rate of hourly pay under 8 AAC 15.100(a)(2) must

24. Actual pay of \$66,780 ÷ 1200 actual straighttime hours = \$55.65 per hour. \$55.65 ÷ 2 = \$27.825.

25. As we have previously observed, Reeves himself understood his salary to cover a two-week-on/two-week-off schedule of seven days a week at approximately twelve hours a day.

26. See *McKinnon v. Kinney Shoe Corp.*, 520 P.2d 1068 (Alaska 1991); *Alaska Int'l Indus. Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979). Moreover, automatic treatment of all earned overtime as actual damages would be wholly arbitrary if construed as an added sanction for late payment of overtime. Such a sanction would, for no apparent reason, single out for additional punishment those nonpaying employers with workers on irregular schedules. Besides being arbitrary,

use the regular rate as a basis for computing total earnings for all hours actually worked. All salary actually paid must be deducted from these total earnings. The difference will reflect the award necessary to ensure that straighttime, overtime, and total compensation are all based on the applicable regular rate of pay. This is the proper measure of Reeves's overtime damages.

Because the trial court's decision to treat all of Reeves's earned overtime pay as unpaid overtime wages would pay Reeves at twice his regular rate for his actual straighttime hours, we REVERSE the judgment and REMAND for recalculation of damages in a manner consistent with this opinion.



STATE of Alaska, Petitioner,

v.

DUTCH HARBOR SEAFOODS, LTD., Respondent.

STATE of Alaska, Petitioner,

v.

TRIDENT SEAFOODS CORP., Respondent.

No. 8-6919.

Supreme Court of Alaska.

Oct. 16, 1998.

Defendants were charged with strict liability commercial fishing violations. The Dis-

trict, a sanction of this kind would produce anomalous results. In the current case, for instance, it would have the effect of punishing PMC for failing to recognize that Reeves might have been required to work increased hours for no additional pay; had PMC known that Reeves's entire salary would automatically be considered compensation for Reeves's straighttime hours, it could have required him to work thirty additional 40-hour workweeks of straighttime for no additional pay. The added work would only have increased Reeves's straighttime hours, which his salary would already be deemed to cover; it would not have increased his overtime or affected his regular rate of pay, as calculated under 8 AAC 15.100(a)(2).

strict Court, Third Judicial District. Donald D. Hopwood, J., granted motion for jury trial under Alaska Constitution, and State petitioned for review. The Court of Appeals affirmed. The Supreme Court of Alaska held that: (1) strict liability commercial fishing violations did not qualify for prosecutions within right to a fair trial under Alaska constitution, and (2) notwithstanding criminal rather than civil nature and thus defendants had no right to jury trial.

Reversed and remanded.

Compton, C.J., filed dissenting opinion.

1. Jury ⇐ 21.1

No right to criminal jury trial under state constitution for defendants charged with strict liability commercial fishing violations; strict liability commercial fishing violations are not "criminal prosecutions" for purposes of Sixth Amendment, size of potential fine or forfeiture of catch do not determine criminality that controls right. Const. Art. 1, § 11.

See publication Words and Phrases for other judicial constructions.

2. Jury ⇐ 21.1

Potential sanction of forfeiture of vessel did not give rise to right to jury trial under Sixth Amendment on strict liability commercial fishing violations, as forfeiture remedial than punitive. AS 16.05.722, Amend. 6; AS 16.05.722.

3. Jury ⇐ 14(1), 21.1

Strict liability commercial fishing violations are minor criminal offenses, rather than civil cases.

1. This is a legal question to be decided by independent judgment. See *State v. Equal Rights Comm'n*, 943 P.2d 1000 (Alaska 1994).

2. 5 AAC 28.020 provides in relevant part: (a) Before a person uses a vessel to fish for groundfish gear in the territorial waters of Alaska, except for the Eastern Gulf of Alaska, the vessel owner or operator must obtain a permit from the Alaska Department of Fish and Game.